

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“At risk of losing its affordability controls” means a project with a deed restriction that expires within five years that is “likely” to convert to market rate (as supported by the market analysis at N.J.A.C. 5:80-33.12(c)1ii), project based assistance that expires within five years, a project that may be condemned or a project that is subject to foreclosure, unless NJHMFA determines such acquisition is part of an arrangement a purpose of which is to terminate such affordability controls.

“At risk of losing its level of affordability” means that operating expenses or capital repair needs are so high that without an award of tax credits, only very high rent increases will keep the project in an acceptable condition and financially feasible. If the current owner or a related party of the current owner shall retain an ownership interest in the project post-rehabilitation, the owner must demonstrate it did not materially contribute to the decline of the property that created the high operating expenses or capital repair needs.

“Brownfield[s] site” means, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of [contamination] a contaminant.” For the purposes of this subchapter, the proposed redevelopment for the site under consideration [must] may also have an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.

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“Community revitalization plan” means a plan endorsed by the municipality to designate an area[s] in need of redevelopment. An adopted redevelopment plan, as defined at N.J.S.A. 40A:12A-3, or an approved neighborhood revitalization plan, as defined at N.J.S.A. 52:27D-491, that includes a subject LIHTC project meets the criteria for a community revitalization plan. This plan is intended to incorporate a vision for future growth that will lead to comprehensive neighborhood revitalization in the target area. For purposes of this subchapter, a community revitalization plan shall include the following criteria:

1. A tax map that delineates revitalization area boundaries and locates the subject LIHTC project within the boundaries;
2. A description of the community revitalization planning process;
3. (No change.)

4. A [land use survey that includes:] parcel map that delineates land uses and vacant buildings and lots[, and use of each parcel] in the target area;

5. Demographic, social and economic profiles of the revitalization area;

6. A narrative describing the [impact of the community revitalization plan towards achieving long-term viability in the target] revitalization area and the long-term vision and objectives for the area; [and]

7. A description of the subject LIHTC project and how it furthers the community revitalization plan; and

[7.] 8. An implementation strategy that contains:

i. A list of organizations participating in the implementation phase of the community revitalization plan; and

[ii. A strategy for meeting objectives described in the community revitalization plan; and]

[iii.] ii. A list of projects [in the revitalization area], programs and steps identified in the community revitalization plan to revitalize the area.

“Community service facility” means, as established at Section 42(d)(4)(C)(iii) of the Code, “any facility designed to serve primarily individuals whose income is 60 percent or less of area median income within the meaning of 26 U.S.C. § 42(g)(1)(B).” For example, a community room, [club house] clubhouse or recreation center may be a community service facility. Lobbies and laundry facilities are not within the scope of this definition.

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"Court-ordered obligation" means a low- or moderate-income rental project that is part of a judgment of repose, as defined by COAH at N.J.A.C. 5:93-1.3, or a court settlement resulting from an exclusionary zoning lawsuit. For the purpose of this definition, a project shall be deemed to be part of a judgment of repose or a court settlement if the applicant provides a letter from the Superior Court judge or special master with jurisdiction over the suit stating that the project will be included in a final judgment of repose or court settlement.

"Density bonus subsidy" means an economic benefit for low- and moderate-income housing resulting from a zoning change that increases permitted density. Determination of whether a project is the recipient of a density bonus subsidy shall be made by the entity with jurisdiction over the municipality (either the Executive Director of COAH or the Superior Court Judge or Special Master with jurisdiction over the suit).

"Developer fee" or "development fee" means the fee that covers the overhead and profit of the developer. Certain fees are subsumed within the developer fee—such as acquisition fees,

compensation to the general partner, financial consultants, employees of the developer, construction managers/monitors, clerk of the works and syndicator-required consultants. Professional fees not paid out of the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, soil investigator, professional planner, historical consultant and environmental consultant. (If there are costs listed under the professional planner, the executed contract shall be submitted. Only those costs determined by NJHMFA to be for planning purposes shall be shown as a separate line item.) All other consultant and professional fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application; otherwise, those fees shown separately will be added to the [develop] developer fee line item [and may result in a lower point score for the project].

The developer fee contained in the application shall be the maximum fee (dollar amount) recognized by NJHMFA at the time of cost certification so long as the project scope remains the same. NJHMFA may recalculate the fee at the time of cost certification using the developer fee percentage in the project's application, possibly resulting in a higher or lower dollar amount, if NJHMFA determines that there are significant increases or decreases in the project scope (substantial new additions to or deletions in the number of units, amenities, etc.).

Any fee paid to the developer in excess of the developer fee, such as an acquisition fee, incentive developer fee, or other pseudonym, shall be treated as a funding source and may not be recognized as a use of funds.

[One of the scoring criteria is a lower developer fee. For scoring purposes, no additional points will be awarded for developer fees that drop below a "floor" of eight percent.]

[The] To the extent there is a reasonable expectation of repayment (as evidenced by available cash flow and/or confirmation by the applicant's syndicator/investor), the amount of developer fee allowed is limited to 15 percent of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication. However, a developer fee of up to 20 percent (of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication) is allowed for the following types of housing:

i. – ii. (No change.)

iii. Housing for [special needs] Supportive Housing populations.

The non-deferred portion of the developer fee shall not exceed eight percent (13 percent for the three types of housing referenced at i, ii and iii above) of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication.

The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties.

["Developmentally disabled" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;

2. Is manifested before the person attains age 22;

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

i. Self-care;

ii. Receptive and expressive languages;

iii. Learning;

iv. Mobility;

v. Self-direction;

vi. Capacity for independent living; and

vii. Economic sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.]

"Eligible basis limits" are limitations on total eligible basis (except for projects in the [Special Needs] Supportive Housing Cycle or those projects that receive credits from volume cap) based on whether or not the application is receiving HOPE VI assistance from the U.S. Department of Housing and Urban Development (HUD). The limits are a specified percentage above the Section 221(d)(3) limits published in 24 C.F.R. Part 200 by HUD as of the first of the year. A project whose total eligible basis exceeds its applicable eligible basis limit may participate in the tax credit program; however, the maximum amount of credits allowed to the project will be limited to the amount of the eligible basis limit applicable to the project. The eligible basis limit is not a per se limit on eligible basis as defined in the Code but is a mechanism that facilitates NJHMFA's exercise of its authority to limit tax credits to what is necessary to finance projects. See Code Section 42(m). For all projects receiving credits from the State housing credit ceiling, NJHMFA shall also limit the eligible basis used for calculating the tax credit in the following manner:

1. - 2. (No change.)

...

"Frail elderly" means a person at least 62 years of age who requires assistance in performing at least two activities of daily living or instrumental activities of daily living (that is, eating, dressing, grooming and household management activities). Only [special needs] projects which [also] qualify as "housing for older persons" under the Fair Housing Act may reserve units for rental exclusively to the frail elderly.

...

"Minimum rehab project" means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction cost[s] totaling less than 50 percent of the acquisition cost where construction cost equals the total of the lines listed under Construction (less any costs associated with step-in-the-shoes basis) on the breakdown of costs and basis form and acquisition cost equals the total of the lines listed under "Acquisition" plus the land cost. Minimum rehab projects are eligible to apply only in the [Special Needs] Supportive Housing Cycle and Final Cycle. In the Final Cycle, [they] unless it is a preservation project, a minimum rehab project shall be funded only if there are no other projects left to fund. NJHMFA shall utilize an amount not less than 33.33 percent of developer fee based on building acquisition costs as a funding source in its evaluation required under 26 U.S.C. § 42(m)(2).

"Mixed income project" qualifying for the [affordability] Mixed Income set-aside in the Family [and Senior Cycles] Cycle means a project with an applicable fraction [between] of no more than 50 percent [and 80 percent] where at least 50 percent of the tax credit units are at or below 50 percent of area median income.

“Preservation [Project] project” means an existing, currently occupied [affordable] housing project at risk of losing its affordability controls or at risk of losing its level of affordability. In order to qualify for the preservation set-aside in the Final Cycle, the application shall include the following:

1. [A copy of all deed restrictions on the property to evidence proof of imminent expiration (within two years) of affordability controls] Documentation that the property is at risk of losing its affordability controls or level of affordability;

2. An agreement precluding the involuntary displacement of [non-tax credit qualifying tenants] any existing resident (other than for good cause);

[3. A maximum applicable fraction of 80 percent in recognition that some tenants will not qualify under the low income housing tax credit program;

4. A 10 percent vacancy rate on non-tax credit units to account for “Next Available Unit” Rule;

5. An election of 20 percent at 50 percent Federal set-aside;]

3. Documentation of how rents will remain at or near existing levels;

4. Utilization of an applicable fraction based on an analysis of both the income levels of existing residents and the market analysis required under N.J.A.C. 5:80-33.12(c)1ii;

[6.] 5. A capital needs assessment which illustrates that the proposed rehabilitation [exceeds the criteria of a minimum rehab project] meets identified critical repair items and 12-month physical needs; and

[7.] 6. (No change in text.)

For all preservation projects [that compete in the preservation set-aside], calculation of the developer fee for building acquisition costs shall be limited to [five] eight percent of the acquisition amount. In addition, the non-deferred amount of this portion of the developer fee shall not exceed four percent of the acquisition amount.

“Qualified Census Tract,” as defined in Section 42(d)(5)(C) of the Code, means a census tract designated by the Secretary of [Housing and Urban Development] HUD in which 50 percent or more of households have an income less than 60 percent of the area median gross income or in which there exists a poverty rate of 25 percent or greater.

"Qualified nonprofit organization" means, pursuant to Section 42(h)(5)(B) of the Code, an entity that owns an interest in the project (directly or through a partnership) and materially participates (within the meaning of Section 469(h) of the Code) in the development and operation of the project throughout the compliance period and is not affiliated with or controlled by a for-profit organization.

1. - 2. (No change.)

The nonprofit set-aside and non-profit points in the [Special Needs] Supportive Housing Cycle are available exclusively to Section 501(c)(3) or (4) housing sponsors who comprise 100 percent of the general partner interest in the final ownership entity (the limited partnership). Limited liability companies and limited liability partnerships are not eligible for the nonprofit set-aside or the non-profit points in the [Special Needs] Supportive Housing Cycle.

In order to qualify for the nonprofit set-aside or the non-profit points in the [Special Needs] Supportive Housing Cycle, the application shall include:

1. - 4. (No change.)

At the point the project places in service, the owner shall be required to submit an attorney opinion letter which states that neither the for-profit developer with a financial interest in the project nor any member of the investor limited partner is or has been a member of the qualified nonprofit organization's board of directors.

...

“Social service coordinator” means a person who is responsible for linking the residents of a tax credit property to appropriate supportive services. The major functions of the social service coordinator include, but are not limited to:

1. Providing case management services to the residents and/or providing linkages to community resources by providing a signed agreement between the parties;

Recodify existing 1. – 7. as 2. - 8. (No change in text.)

"Social services [model" means any project which submits an executed agreement between a housing and social service provider or otherwise demonstrates to the satisfaction of NJHMFA that one or more of the following types of services shall be provided for at least the term of the compliance period to improve the quality of life of the residents of the project] plan” means a description of the scope of social and support services to be provided for supportive housing projects, including a staffing plan and how the services will be delivered and funded. The services must be affordable[,] and appropriate to the target population to the satisfaction of NJHMFA, available and accessible to the project's tenants and the social service provider must have the capacity to perform such services. The services include, but are not limited to:

1. - 8. (No change.)

Social service coordinator, case manager and linkages [coordinator/ provider] coordinator/provider are not counted as separate and distinct services. NJHMFA shall view these services as all being part of the same service.

["Special needs project" means a project which shall rent a minimum of 25 percent of the tax credit units in the project to one (or more) of the targeted special needs populations referred to below, and must make available a minimum of three daily services addressing the needs of the identified group, one of which must be a social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week. Project owners may rent more than 25 percent of the tax credit units to one or more of these targeted populations. However, owners should also be aware that for certain types of special needs projects, when more than 30 percent of the units are set aside for persons with special needs, "saturation" may occur resulting in an institution-type atmosphere. Special needs populations include individuals and families who are in need of certain types of homes and/or community-based supportive services, usually on an ongoing basis, in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care (such as meals preparation, assistance with housecleaning, etc.) to high level (such as substance abuse and mental health supports) to medically intense (such as skilled nursing) and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population.

1. Examples of targeted special needs populations are:

i. Persons with AIDS/HIV-related illness;

ii. Homeless;

iii. Mentally ill;

iv. Frail elderly;

v. Alcohol/substance abusers;

vi. Persons with physical disabilities;

vii. Mentally retarded/developmentally disabled;

viii. Pregnant/parenting teens;

ix. Participants of the Work First Temporary Assistance to Needy Families Program;

x. Participants of the Work First General Assistance Program; and

xi. Victims of domestic violence.

2. Examples of support services include, but are not limited to, the following:

i. Social service coordinator/case manager;

ii. Counseling and crisis intervention;

iii. Health care advocacy and linkages;

iv. Assistance with activities of daily living and/or instrumental activities of daily living;

v. Recreational activities;

vi. Entitlement counseling and advocacy;

vii. Employment counseling and training;

viii. Support groups;

ix. Home-based personal or medical assistance;

x. Skilled nursing;

xi. Meals preparation;

xii. Housekeeping;

xiii. Substance abuse and mental health supports; and

xiv. Child care/adult day care.]

"Sponsor certification" means the certification signed by the developer, applicant and general partner submitted at application, reapplication, carryover request or IRS Form 8609 request which identifies the anticipated or actual date that the project is placed in service. The certification shall also include a signed breakdown of costs and basis and a statement whereby the owner agrees to abide by the low income housing tax credit requirements of the Code and a statement, under penalty of perjury, that the information contained in the certification is true and complete.

"Substantially incomplete" means an application with a total of three or more defects as described at N.J.A.C. 5:80-33.11(c)1 and 3 or an application with a total of six or more defects as described at N.J.A.C. 5:80-33.11(c)1, 2 and 3. An application deemed to be substantially incomplete is not eligible for the 48-hour period to cure such defects under N.J.A.C. 5:80-33.11(c).

. . .

"Supportive Housing project" means a project which shall rent the greater of 10 units or 25 percent of the total project units to one (or more) of the targeted special needs populations referred to below, and must make available a minimum of three daily services addressing the needs of the identified group, one of which must be a social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required and the coordinator must be dedicated to the tax credit project for at least 20 hours a week. Special needs populations include individuals and families who are in need of certain types of homes and/or community-based supportive services, usually on an ongoing basis, in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care (such as meals preparation, assistance with housecleaning, etc.) to high level (such as substance abuse and mental health supports) to medically intense (such as skilled nursing) and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population.

1. Targeted special needs populations are:

i. Persons with AIDS/HIV-related illness;

ii. Homeless;

iii. Persons with a mental health disability;

iv. Alcohol/substance abusers;

v. Persons with physical disabilities;

vi. Mentally retarded/developmentally disabled;

vii. Pregnant/parenting teens;

viii. Participants of the Work First Temporary Assistance to Needy Families Program;

ix. Victims of domestic violence;

x. Ex-offenders and youth offenders;

xi. Youth aging-out of foster care, runaway youth and homeless youth;

xii. Special needs children;

xiii. The blind, visually impaired and hearing impaired; and

xiv. Any other emerging special needs population approved by a State department or agency.

2. Examples of support services include, but are not limited to, the following:

i. Social service coordinator/case manager;

ii. Counseling and crisis intervention;

iii. Health care advocacy and linkages;

iv. Assistance with activities of daily living and/or instrumental activities of daily living;

v. Entitlement counseling and advocacy;

vi. Employment counseling and training;

vii. Home-based personal or medical assistance;

viii. Skilled nursing;

ix. Meals preparation;

x. Housekeeping;

xi. Substance abuse and mental health supports; and

xii. Child care/adult day care.

. . .

“Voluntary compliance with the courts” means a project located in a municipality that has voluntarily complied with its [second round] fair share obligation either by a petition to the Council on Affordable Housing (COAH) or by a request to the court and its [second round] obligation was not the subject of an exclusionary zoning lawsuit. Voluntary compliance shall be verified by the entity with jurisdiction over the municipality (either the [executive director] Executive Director of COAH or the [special master] Special Master).

5:80-33.3 Application cycles

Each year, NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised [in the] on the NJHMFA website www.nj-hmfa.com and in at least five of the following newspapers: Atlantic City Press, The Record, Newark Star Ledger, The Courier News, The Asbury Park Press, The Camden Courier Post, Bridgeton Evening News and The Times. NJHMFA shall set the eligibility cut-off dates in each year for receipt of completed applications.

Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. The application filing deadlines and the credits available in each cycle shall be announced as early in the year as possible. Reservations shall be announced approximately 90 days (or the next business day if the 90th day is a weekend or holiday) after the deadline for the cycle. NJHMFA may adjust the number of cycles or adjust the award dates if required by the timing of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances. A project cannot compete in more than one cycle simultaneously.

5:80-33.4 Family Cycle

(a) Non-age restricted developments [with large family units which comprise at least 15 percent of the low-income units] may apply to this cycle. Not less than \$5,000,000 will be available in the Family Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,800,000. Minimum rehab projects are not eligible to apply in this cycle. There are [three] four set-asides in the Family Cycle:

1. Affordability set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application that has [either] selected the 20 percent at 50 percent Federal set aside as defined under Section 42(g)(1)(A) of the Code [or is a mixed income project as defined under N.J.A.C. 5:80-33.2]. If the 20 percent at 50 percent election is selected, all tax credit units shall be restricted to 50 percent of the area median income adjusted for family size. For example, if the project has an applicable fraction of 100 percent, 100 percent of the units shall

be restricted to 50 percent of the area median income adjusted for family size. The 20 percent at 50 percent election [or lower applicable fraction] shall be reflected on each building's IRS Form 8609 and on the deed of easement and restrictive covenant. If, because of lack of demand, the affordability set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

2. (No change.)

3. Nonprofit set-aside: The third reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a qualified nonprofit organization that is community based within [a] the qualified census tract in which the project is located; that is, an organization that operates and is developing housing within a geographically defined service area within a qualified census tract. If there are no eligible applications from a community based qualified nonprofit organization located within [a] the qualified census tract in which the project is located, then the third reservation of credits from the Family Cycle will be given to the highest-ranking eligible application from a qualified nonprofit organization. If, because of lack of demand, the nonprofit set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

4. Mixed Income set-aside: The fourth reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a Mixed Income project. If, because of lack of demand, the Mixed Income set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

(b) (No change.)

(c) Reservations shall first be awarded to the highest-ranking eligible projects qualifying for the aforementioned prioritized set-asides. Thereafter, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the [Special Needs] Supportive Housing Cycle and lastly, the Final Cycle.

5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than \$2,400,000 will be available in the Senior Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,200,000. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should comprise at least 85 percent of the project. There are two set-asides in the Senior Cycle:

1. Affordability set-aside: The first reservation of credits from the Senior Cycle will be given to the highest-ranking eligible application that [either] has selected the 20 percent at 50 percent

Federal set aside as defined under Section 42(g)(1)(A) of the Code [or is a mixed income project as defined under N.J.A.C. 5:80-33.2]. If the 20 percent at 50 percent election is selected, all tax credit units shall be restricted to 50 percent of the area median income adjusted for family size. For example, if the project has an applicable fraction of 100 percent, 100 percent of the units shall be restricted to 50 percent of the area median income adjusted for family size. The 20 percent at 50 percent election [or lower applicable fraction] shall be reflected on each building's IRS Form 8609 and on the deed of easement and restrictive covenant. If, because of lack of demand, the affordability set-aside is not utilized, the credits in this set-aside shall be released into the Senior Cycle for use by other applications.

2. (No change.)

(b) (No change.)

(c) Reservations shall first be awarded to the highest-ranking eligible project qualifying for the aforementioned prioritized set-asides. Thereafter, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the [Special Needs] Supportive Housing Cycle and lastly, the Final Cycle.

5:80-33.6 [Special Needs] Supportive Housing Cycle

(a) Projects in which [at least 25 percent of the tax credit units] the greater of 10 units or 25 percent of the total project units are rented to a special needs client population and at least three appropriate services are provided may apply to the [Special Needs] Supportive Housing Cycle. There [is \$1,200,000] will be not less than \$1,800,000 available in the [Special Needs] Supportive Housing Cycle and the maximum annual allocation of credits to projects competing in this cycle is [\$600,000] \$900,000. [There is one set-aside in the Special Needs Cycle:

1. Developmentally disabled set-aside: The first reservation of credits from the Special Needs Cycle will be given to the highest-ranking eligible project providing housing for the developmentally disabled. Applicants of projects seeking credits from the developmentally disabled set-aside must demonstrate experience both as a social service provider and housing developer. For example, if the project owner is strictly a social service provider, it must joint venture with an experienced developer or hire a housing consultant. Conversely, if the project owner is a developer with no experience in providing social services, it must joint venture with an experienced service provider. The application shall include a letter from the Department of Human Services, Division of Developmental Disabilities (“Division”) which confirms that the Division has reviewed and agreed to the applicant’s service plan and that the cost is within the amount the Division has available for the operating and social service funding for at least 25 percent of the tax credit units in the project. Projects serving the developmentally disabled populations are eligible for Special Needs Cycle credits beyond the set-aside. If, because of lack of demand, the developmentally disabled set-aside is not utilized, the credits in the

developmentally disabled set-aside shall be released into the Special Needs Cycle for use by other eligible applications.]

(b) Reservations shall [first] be awarded to the [highest-ranking project qualifying for the aforementioned prioritized set-aside. Then, reservations shall be awarded to the] highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the highest-ranking eligible project(s) in the Family Cycle, the Senior Cycle, the [Special Needs] Supportive Housing Cycle and lastly, the Final Cycle.

(c) (No change.)

5:80-33.7 Final Cycle

(a) All projects, including minimum rehab projects, may apply to this cycle. There is at least \$1,805,000 available in the Final Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$1,800,000. There are two set-asides in the Final Cycle:

1. - 2. (No change.)

(b) In the unlikely event that less than 10 percent of the ceiling has been awarded to qualified nonprofit organizations, then awards from the Final Cycle shall first be made to such organizations until not less than 10 percent of the credit ceiling has been awarded to such organizations. If the Federal nonprofit requirement as stated in 26 U.S.C. § 42(h)(5)(A) is satisfied, reservations shall be awarded to the highest-ranking eligible HOPE VI project. Then reservations shall be awarded to the highest-ranking eligible preservation project. Then, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the [Special Needs] Supportive Housing Cycle and lastly, the Final Cycle.

(c) - (e) (No change.)

5:80-33.8 Reserve

(a) Projects that need credits because of technical errors and severe hardship can submit a reapplication for credits from the Reserve. The Reserve may also be used to fund supplemental awards or for unforeseen circumstances beyond the developer's control where NJHMFA determines that a project's financial feasibility is jeopardized. Any credits not dedicated to the Family, Senior, [Special Needs] Supportive Housing and Final Cycles shall be deposited into the Reserve. Awards of credits from the Reserve are subject to availability and to NJHMFA's evaluation of the request.

1. Since NJHMFA does not award partial allocations, one of the purposes of the Reserve is to provide supplemental awards to eligible projects that can only be partially funded with the credits remaining in their respective cycles. Supplemental awards are given first to the highest-ranking, partially funded eligible project from the Family Cycle. NJHMFA then evaluates the highest-ranking, partially funded eligible projects from the Senior and [Special Needs] Supportive Housing Cycles. [Supplemental] The next supplemental awards [are] shall be given to the project which requires the least amount of credits from the Reserve to achieve the maximum eligible credit amount. Should sufficient credits exist in the Reserve, NJHMFA shall give a supplemental award to the highest-ranking, partially funded eligible projects from both the Senior and Supportive Housing Cycles. Simultaneously, credits remaining from cycles that did not receive a supplemental award shall be deposited into the Reserve.

2. (No change.)

[3. Those projects which are the subject of the matter entitled *In re Allocation of Federal Low Income Housing Tax Credits under the Urban, HOPE VI and Final Cycles pursuant to the 2002 Low Income Housing Tax Credit Qualified Allocation Plan, N.J.A.C. 5:80-33.1 to 33.40, by the New Jersey Housing and Mortgage Finance Agency*, Superior Court of New Jersey, Appellate Division (Dkt. No. A-1551-02T2) may return their 2002 tax credit allocation to the Reserve in exchange for an allocation of current year credits in an amount not to exceed the amount allocated in the 2002 Carryover Allocation Agreement. A letter requesting such an exchange shall be

submitted to the Division of Tax Credit Services no later than December 15, 2004 and shall include the following:

- i. Sponsor Certification for Reapplication;
- ii. The reapplication fee set forth at N.J.A.C. 5:80-33.10(a)2;
- iii. Evidence of the project's continued eligibility under the requirements of N.J.A.C. 5:80-33.13, as in effect on July 15, 2002. The request shall include all updates to the original application. If no changes have been made since the submission of the original application, an affirmative statement from the project owner certifying the continued validity and accuracy of the information contained in the original application shall be provided; and
- iv. Evidence of the project's financial feasibility as required by 26 U.S.C. § 42.]

5:80-33.10 Application fee schedule

(a) The following fees shall be submitted at the time the application or reapplication is submitted:

1. An application fee of \$2,500 shall be paid by applicants for projects applying to the Family, Senior or [Special Needs] Supportive Housing Cycle, and any first-time applications to the Final Cycle, as well as for projects applying for volume cap tax credits.

2. A reapplication fee of \$100.00 is due for projects requesting hardship credits from the Reserve and for projects that applied to the Family, Senior or [Special Needs] Supportive Housing Cycle, which did not receive a reservation of credits, and wish to reapply in the Final Cycle of the same allocation year. Projects that are in essence new projects (for example, changes in the project composition, sites, or owner or developer entities) shall submit a new application and application fee.

(b) (No change.)

5:80-33.11 Cycle deadlines

(a) Application cycles shall be announced by NJHMFA via notices sent to [its] the mailing list maintained by the Tax Credit Division no later than 45 days prior to the deadline. Applications shall be accepted beginning one month prior to the deadline date. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. Late and substantially incomplete applications shall not be admitted into a cycle, [and] Late applications will be returned to the applicant.

(b) (No change.)

(c) [Applications that are substantially incomplete cannot be accepted, but applicants] Applicants shall be given 48 hours to cure defects as follows, except for applications that NJHMFA deems to be substantially incomplete:

1. - 3. (No change.)

(d) Except for applications that NJHMFA deems to be substantially incomplete, NJHMFA shall notify the applicant of any curable defects it discovers by telephone and, simultaneously, in writing by facsimile transmission. The applicant's corrective submission shall not be considered unless it is received by NJHMFA no later than 48 hours (excluding weekends and legal holidays) from the applicant's receipt of the facsimile transmission. NJHMFA shall notify applicants of curable defects on Mondays, Tuesdays or Wednesdays. No application will receive more than one notice for a curable defect. A project that has previously applied for competitive credits (a reapplication) may receive notification of a curable defect regardless of whether such project has received notification in the past.

(e) - (g) (No change.)

5:80-33.12 Application to a cycle/eligibility requirements

(a) - (b) (No change.)

(c) Applications shall meet all of the eligibility requirements listed in this section in order to be admitted into a cycle. NJHMFA reserves the right to contact the applicant if the need arises.

1. Applications shall include the information set forth in (c)1i, either (c)1ii or (c)1iii, and (c)1iv below in order to demonstrate the need and demand for the proposed project in a market area. If NJHMFA determines an insufficient market need or demand exists, the project shall be deemed ineligible.

i. (No change.)

ii. A market study, certified to both the applicant and NJHMFA in the analyst's Certification, shall be submitted for all projects. Two copies of the report shall be submitted. The market study shall be no more than six months old; therefore, unsuccessful Spring Cycle applicants may have to update their market study prior to applying to the Final Cycle. Projects applying for additional credits (either from the Reserve or a competitive cycle) that have already received a previous allocation of tax credits shall not be required to submit a new market study. The analyst shall state in the certification that all market study requirements have been fully addressed. If any relevant information cannot be obtained, the analyst shall explain why the information cannot be obtained. The study shall also identify any assumptions, estimates, projections and models used in the analysis. The assumptions used in the market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The data and analysis shall clearly indicate enough demand in the market to support the proposed development. Any additional

information appropriate to the market area and the project shall be submitted to demonstrate the demand for the proposed housing project. The report shall include, at a minimum:

(1) - (3) (No change.)

(4) A demographic analysis of the households in the market area in (c)1ii(3) above which are income eligible and can afford to pay the rent (assuming potential households may spend up to 40 percent of their income on housing expenses). When appropriate, the eligible population shall also be analyzed by tenure (owner/renter), size of renter households, and age. Market studies submitted for projects applying to the Senior Cycle shall include an evaluation of the market for the eligible population over 70 years old. Demographics from the last census shall be updated to reflect current market conditions and shall be the basis for projected demographics. This research data shall be provided in the appendix and shall be from an organization such as Claritas or a governmental source. [Special Needs] Supportive Housing projects shall also provide demographics on the special needs population in the project in order to substantiate need and demand at projected rent levels;

(5) - (10) (No change.)

iii. For projects of 25 units or less[,] and projects receiving Project Based Section 8 rental assistance for 100 percent of the units [and projects in which all of the units are funded by the Division of Developmental Disabilities as described under the developmentally disabled set-

aside described at N.J.A.C. 5:80-33.6(a)1], the form of market analysis described below may be submitted in lieu of the market study requirements listed in (c)1ii(1) through (6) above:

(1) - (2) (No change.)

iv. (No change.)

2. Applications shall include the information set forth in (c)2i and ii below in order to demonstrate site control:

i. The applicant shall be either the owner or developer of the project and shall demonstrate that it has site control of the property via any one or a combination of the following: fee simple title; long-term leasehold interest (for a minimum term of the compliance and extended use periods); option to purchase or lease, including evidence that options are renewable until at least the start of construction; executed land sales contract or other enforceable agreement for acquisition of the property; and/or an executed disposition and development agreement with a public agency that specifies the site(s) to be acquired and, if the property is to be or may be acquired by eminent domain, identifies the condemnor, as such term is defined at N.J.S.A. 20:3-1 et seq. or its successor.

ii. (No change.)

3. Applicants shall submit a copy of the preliminary or final site plan resolution as well as all other approvals. For [substantial] rehabilitation projects with sites that are not required by the municipality to obtain site plan approval, a letter from the planning board (or appropriate municipal official) stating that the sites are not subject to site plan approval shall be provided. It is the applicant's responsibility to insure that the project complies with all applicable local land use and zoning ordinances and that nothing at the local or county level will interfere with the project obtaining all necessary permits.

4. - 5. (No change.)

6. All funding sources planned for the project shall be committed to the project. The amount and all terms of the funding commitment shall be listed in the documentation provided under (c)6i through viii below. The amount and terms shall be used by NJHMFA in its underwriting analysis. Expired commitments, letters of interest/intent and term sheets do not qualify as commitments. To evidence commitments for funding sources, the following is required:

i. (No change.)

ii. State Balanced Housing, Home Express or State HOME funds: Projects applying for [both] Balanced Housing or Home Express funds and tax credits shall comply with the applicable rules of [both] these programs. The Department of Community Affairs (DCA) shall inform NJHMFA of those projects that have submitted a complete application for State Balanced Housing or State HOME funds by the tax credit application deadline. DCA will

inform NJHMFA of the projects it intends to fund and the subsidy amounts if those projects are sufficiently competitive to receive tax credits. DCA will announce the Balanced Housing, Home Express and HOME commitments at the same time NJHMFA awards the reservations of tax credits. [The expenditure of Balanced Housing funds is conditioned upon the entry of a judgment of repose (in the case of a project meeting a court-ordered obligation) or upon the receipt of substantive certification (in the case of a project meeting a COAH obligation). Thus, an applicant may not include Balanced Housing funds as an initial funding source unless, at the time of the application deadline, any applicable judgment of repose or grant of substantive certification has occurred.] An applicant with a Balanced Housing or Home Express commitment may not include Balanced Housing or Home Express funds as an initial funding source unless, at the time of the application deadline, the municipality in which the project is located has formally received substantive certification from the Council on Affordable Housing (COAH) and/or has entered into a judicially approved compliance agreement to settle its fair share housing obligation and/or has been designated as a receiving municipality under a regional contribution agreement and project plan approved by COAH and/or has, at any time since Fiscal Year 1988, been eligible to receive State aid pursuant to P. L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.). Where such events have not occurred by the application deadline, the applicant shall provide a fully committed alternate initial source of funding that will later be replaced with the Balanced Housing or Home Express monies and include the Balanced Housing or Home Express commitment as a part of the overall plan of funding for the project.

iii. (No change.)

iv. Municipal, county or PHA grants or loans: Funding approvals for municipal or county grants or loans (for example, CDBG, RCA, HOME) vary from county to county and from municipality to municipality. NJHMFA is sensitive to the regulatory constraints and administrative processes of local governmental funding sources. Therefore, evidence of firm commitments may vary from one government entity to the next. Generally, it is the municipal council and county board of freeholders that have final approval authority; therefore, a copy of the county or municipal resolution/ordinance approving the funds for the project is required to be submitted with the application. However, for governmental entities where that is not the standard approval process, NJHMFA shall accept comparable commitments. For example, for projects receiving HOME funds from participating jurisdictions (["]PJs["]), NJHMFA shall accept one of four forms of commitments in light of the many ways that local governmental entities combine their local approval process with Federal HOME regulations. First, applicants may simply submit an approved municipal or county resolution described in the beginning of this subsection. Second, an applicant may submit a copy of the HUD form 7015.15 "Request for Release of Funds & Certification" along with a copy of the PJ's cover letter transmitting it to HUD. Third, the applicant may submit a copy of their PJ's Comprehensive Housing Affordability Strategy (CHAS) with the project and the funding amount specifically cited in the CHAS along with a copy of the PJ's resolution approving the CHAS. Fourth, for those PJs that have authorized their staff to make final funding decisions, a commitment letter signed by the authorized signatory (that is, the person having final approval authority) shall be sufficient so long as documentation delegating final approval authority to the signatory is also submitted.

v. Owner equity/loans and deferred developer fee [pledges]: All applicants representing that they shall be contributing equity beyond that generated by the tax credit shall disclose the amount, the source and all terms. Applicants "coming out-of-pocket" to fill a funding gap shall provide a letter from an independent C.P.A. who certifies that the applicant has the amount of cash that is needed to fill the funding gap. Cash already expended on the project by the applicant can be utilized as a source of funds if said expenditures are verified by an independent C.P.A. and said cash is not an advance of other project funding sources. If the developer fee is [pledged] deferred, applicants shall specify the amount, and when and how it will be paid. (NJHMFA establishes maximum developer fees.) Projects which utilize more than 50 percent of the total developer fee as a funding source at the application stage shall be declared infeasible, unless such use of the developer fee is on an interim basis (that is, if an anticipated funding source to replace the deferred developer fee [pledge] is identified in the application, and the commitment of said funds is received no later than the issuance of the carryover allocation). Failure to secure said funding source and subsequently reduce the deferred portion of the developer fee [pledge] to 50 percent of the total amount by carryover shall result in a cancellation of the tax credit reservation. Contractor fees cannot be pledged. Applicant equity or deferred developer fee [pledges] may be subsequently replaced by State HOME or Balanced Housing resources only if the project is a COAH/Court-ordered project referenced in (c)6ii above or if the application for State HOME or Balanced Housing resources has been submitted by the tax credit application deadline.

vi. - vii. (No change.)

viii. Federal Home Loan Bank (FHLB): Applicants simultaneously applying in the Spring funding cycles for tax credits (Family, Senior or [Special Needs] Supportive Housing Cycle) and in the FHLB Affordable Housing Program (Spring window only) shall not be required to submit a commitment letter from FHLB by the application deadline so long as the FHLB awards are scheduled to be announced during the Spring tax credit cycles. If a project fails to receive FHLB funding, the project may be declared infeasible unless there is an alternate source of financing, such as a [pledged] deferred developer fee, identified in the tax credit application. Final Cycle applicants must submit their FHLB commitment with the application by the Final Cycle application deadline.

7. In accordance with the Code, NJHMFA shall examine the reasonableness of the operational costs of the project. Applicants shall demonstrate that their project is financially feasible and viable as a qualified low-income housing project throughout the tax credit compliance period.

i. (No change.)

ii. Applicants shall submit a 15-year cash flow pro forma signed by the first mortgagee (or syndicator/investor if the project has no hard debt) which exclusively reflects the following language verbatim: "We acknowledge that this pro forma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)."

(1) The proforma must precisely reflect the rent structure in the tax credit application, including all lenders' assumptions such as principal and interest payments, non-rental

income, operating expenses, required reserves, annual fees, etc. as well as other characteristics of the application that impact financial feasibility (for example, cost of social services). For example, a project's Balanced Housing application (or other lender application) must mirror the development cost, operating assumptions, rent structure, etc., shown in the tax credit application.

(2) (No change.)

(3) The pro forma may reflect rental assistance only if such assistance is project based and is evidenced by the submission requirements described in (c)12 below. The subsidy may be illustrated only for the initial contractual term; that is, future renewals of project based subsidy contracts cannot be assumed. Upon the expiration of project based rental assistance, [Special Needs] Supportive Housing projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-[Special Needs] Supportive Housing projects, the project shall be underwritten at rents that are appropriate for market conditions (and are thus supported by the market study required at (c)1ii above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

(4) (No change.)

iii. - v. (No change.)

8. Successful participation in the Environmental Protection Agency's (EPA) ENERGY STAR Homes Program or equivalent (for example, New Jersey's ENERGY STAR Homes Program) shall be required for all applications except master-metered rehabilitation, preservation projects and minimum rehab projects. Applications shall include a copy of the signed ENERGY STAR Partnership Agreement or Specification Form between the applicant and the EPA (or equivalent) or a letter from the project architect certifying that individually metered units in the proposed rehabilitation project would be impractical. At the time a project places in service, owners shall submit to NJHMFA the ENERGY STAR Homes Certificate issued by the EPA (or equivalent) for each building in the project.

9. Applicants requesting acquisition credits shall include an attorney's opinion regarding each building's eligibility for acquisition credits. Applicants shall submit an appraisal not older than six months. The acquisition basis shall be limited to the lesser of the purchase price or appraised value of the building. If acquisition credits are denied, the application shall still be considered for rehabilitation credits so long as the project remains feasible without the acquisition credit. NJHMFA reserves the right to require an independent appraisal which conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) for those projects that have land acquisition costs totaling over \$7,500 per unit.

10. - 11. (No change.)

12. All applicants receiving rental subsidy from a government or private source shall submit with the tax credit application evidence of receipt of such assistance. Evidence of Project Based

Section 8 Rental Assistance shall include, at a minimum, a letter from the Public Housing Authority (PHA) firmly approving the project for Section 8 Project Based Assistance subject to the completion of the subsidy layering review. For projects involved in the AFL-CIO Pension Fund Program, a preliminary commitment from the AFL-CIO shall suffice. For other types of (non-Section 8) rental assistance, evidence shall include a fully executed rental assistance contract that specifies the source and term of the subsidy. Only projects receiving Project Based Section 8 Rental Assistance may underwrite the project using the fair market rents (FMRs) as defined by the project's approved HAP contract. Upon the expiration of project based rental assistance, [Special Needs] Supportive Housing projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-[Special Needs] Supportive Housing projects, the project shall be underwritten at rents that are appropriate for market conditions (and are thus supported by the market study required at (c)1ii above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

13. [Special Needs] Supportive Housing projects applying to any cycle shall submit the following items in addition to those items at N.J.A.C. 5:80-33.15(a)5:

- i. A [special needs] Supportive Housing marketing analysis;
- ii. A [special needs] Supportive Housing marketing plan;
- iii. Evidence of the [special needs housing] Supportive Housing development or management experience of the social service provider (or the applicant); and

iv. [For projects applying to the Developmentally Disabled set-aside, the application shall include a letter from the New Jersey Department of Human Services, Division of Developmental Disabilities (Division) which confirms that the Division has reviewed and agreed to the owner's service plan and that the cost is within the amount the Division has available for the operating and social service funding for at least 25 percent of the tax credit units in the project.] A social services plan that describes the scope of services, including how the services will be funded, the staffing plan, and how the services will be delivered. The plan must include, at a minimum, the following three services: service coordination/case management; linkages to mainstream resources, including entitlement programs; and linkages to health care and treatment programs as needed. Services should be designed to assist people to maintain their housing and/or residential opportunity. The tenant selection policy must be included. An explanation is required if any populations are excluded from the eligibility criteria. The applicant must also provide evidence of firm agreement(s) (executed contracts) with service providers for services and provide evidence of funding sources or documentation of how and by whom the services will be paid to qualify for points in this category. For projects targeting people who are at 30 percent of median income or below, all services included in the social services plan must be provided at no charge to the tenants.

14. (No change.)

15. Applicants applying in the HOPE VI set-asides shall submit the following:

i. - ii. (No change.)

iii. An analysis conducted by the applicant's accountant of anticipated project cash flow and residual value demonstrating a reasonable prospect of repayment of all loans funded by the proceeds of the HOPE VI [grant] funds and all debt. This analysis shall incorporate the same assumptions utilized in the 15-year [operating] cash flow pro forma submitted pursuant to (c)7ii above; and

iv. (No change.)

5:80-33.13 Application for additional credits

(a) Applicants may apply for additional credits in one of two ways: through a hardship request from the Reserve or by applying under one of the cycles set forth in N.J.A.C. 5:80-33.4 through 33.7.

1. Hardship requests up to \$100,000 shall apply to the Reserve. See N.J.A.C. 5:80-33.8 for a description of the Reserve. Applicants shall submit all of the following before NJHMFA will consider any hardship request:

i. (No change.)

ii. A Sponsor Certification for Re-Application (including all updates to original application[. The developer fee cannot exceed that stated in the original application]);

iii. - iv. (No change.)

v. Evidence that at least 50 percent of the developer fee is [pledged] deferred and that the applicant has attempted to increase funding from every other source (except State Balanced Housing from the New Jersey Department of Community Affairs) before applying to the Reserve for additional credits. The developer fee cannot exceed that stated in the original application; and

vi. (No change.)

2. Requests for additional credit of more than \$100,000 shall be made through application to a competitive cycle. Such submission shall consist of the complete application as well as items (a)liv through vi above. The original allocation plus the additional credit shall be used to calculate the tiebreaker at N.J.A.C. 5:80-33.19(a)1.

(b) (No change.)

5:80-33.14 Scoring and ranking

(a) Because of the limited amount of credits and the high volume of applications to NJHMFA, only a fraction of the projects that apply typically receive credits. In addition to meeting the eligibility

criteria described at N.J.A.C. 5:80-33.12, applications that fail to satisfy a minimum of 65 percent of the maximum score under the ranking criteria established under N.J.A.C. 5:80-33.15 through 33.18 shall be declared ineligible to obtain a reservation of tax credits[, with the exception of the highest-ranking and otherwise eligible application in the preservation set-aside under N.J.A.C. 5:80-33.7(a)2]. NJHMFA will rank projects according to the score sheet submitted in the project's application. Based on this ranking, NJHMFA will then examine the applications of only those projects that rank sufficiently high to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

(b) - (d) (No change.)

5:80-33.15 Point system for the Family Cycle

(a) The point system for the Family Cycle shall be as follows:

1. - 2. (No change.)

[3. Zero to 10 points shall be awarded based on the percentage of the low-income units meeting the definition of a large family unit. Points are based on the percentage of large family units with respect to the total number of low-income units; it is not based on square footage. Points are maximized when large family units make up 30 percent of the low-income units for low-rise, garden apartments, single family and townhome/rowhome projects. New construction mid-rise

and high-rise projects cannot qualify for these points unless the project contains 25 units or less. For mid-rise and high-rise rehabilitation projects, and mid-rise and high-rise new construction projects of 25 units or less, points are maximized in this category where 20 percent of the low-income units meet the large family unit definition. Large family units are not required to be located within every residential building in the project.] 3. Applicants may select one of the following options (three to seven points):

i. Low-rise buildings where at least 30 percent of the units are large family units shall receive seven points. Points are based on the percentage of large family units with respect to the total number of units, not on square footage; or

ii. Mid-rise or high-rise rehabilitation projects shall receive three points.

4. Applicants may select one of the following options for municipal, county and public housing authority (PHA) support.

i. - iii. (No change.)

iv. Projects that capitalize an escrow in an amount equal to two years worth of taxes, have a 1.20 debt coverage ratio with a minimum of \$2,600 per unit core operating expenses and receive municipal, county or PHA support of more than one percent and less than five percent of total project costs shall receive two points.

v. For purposes of this point category, municipal, county or PHA support means contribution of land for nominal consideration (\$100.00 per parcel or less) or monetary contribution to the project (for example, HOME, RCA, CDBG, UDAG). Evidence of support shall be in the form of an authorized resolution or ordinance from the appropriate authority, and all steps necessary to make the resolution or ordinance legally binding shall have been completed. As evidence of the fair market value of a land contribution, the application shall include an appraisal (not older than six months) stating the value of contributed land. The tax escrow shall equal the two year amount reflected in the [operating] cash flow pro forma, and shall be confirmed by the municipality prior to the application deadline as the anticipated tax assessment when the project is completed.

5. - 6. (No change.)

7. NJHMFA supports the implementation of the New Jersey State Plan for housing development. The State Plan identifies the unique natural and built infrastructure in areas across the State and presents specific recommendations for growth. To qualify for this point category, a majority of the units shall be located within the qualifying area and the qualifying area shall be delineated by the application deadline. In order to receive points as a project satisfying a COAH obligation, the petition for substantive certification or amendment to a plan that has previously received substantive certification must be received by COAH by the tax credit application deadline. For more information on whether projects are located in smart growth areas, visit the NJHMFA website at [www.nj-hmfa.com] www.nj-hmfa.com or contact the NJHMFA Manager of

Policy, Research and Planning at (609) [278-7504] 278-7400. Applicants may select one of the following options:

i. - iii. (No change.)

8. NJHMFA awards up to three points for the provision of unit amenities. One point will be awarded per amenity offered. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. The list provided below is not all-inclusive. Substitutions are permitted at NJHMFA discretion; however, it is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i. - xii. (No change.)

xiii. Outside storage lockers[.]; and

xiv. High speed internet access.

9. - 11. (No change.)

12. Projects with a property manager that will have successfully completed an NJHMFA approved tax credit certification course prior to the project being placed in service shall receive

two points. For the list of approved tax credit certification courses, please contact NJHMFA's Division of Tax Credit Services at (609) [278-7421] 278-8818.

13. (No change.)

14. Applications that select one of the following shall receive one point [per percentage point reduction in the developer fee up to a maximum of seven points. For example, an application by a 25-unit project which lists a 15 percent developer fee shall receive five points because it is five percentage points below the maximum allowance of 20 percent.];

i. Successful participation in the New Jersey Affordable Green Program. In order to qualify for this point, the application shall include a copy of the completed and submitted Green Homes application and executed letter of intent between the developer and the New Jersey Green Homes office. The letter of intent shall include a project description and a narrative defining the green goals of the project and how the developer intends to achieve the goals. (Note: Developments participating in the New Jersey Affordable Green Program may be eligible for up to \$7,500 per unit to cover the incremental costs of green building features.)

ii. Incorporation of solar photovoltaic into the project. The solar photovoltaic system must meet the following standards: Be sized to cover at least 75 percent of the project's common area electrical expense and be at least a 20 kilowatt system. Documentation for this point includes a written and signed quote from a Board of Public Utilities (BPU)-certified solar installer indicating the location, size, type, cost, and energy output of the proposed system and

a signed affidavit from the developer agreeing to purchase, install and maintain the system for a minimum of 20 years. (Note: The BPU currently provides rebates for solar photovoltaic installations that cover approximately 60 percent of the cost.)

Example: A project has an estimated common area electricity need of 50 kilowatts. The roof of the project can accommodate a 40 kilowatt system. The developer is eligible for the solar point since the 40 kilowatt system covers 80 percent of the common area usage and the system is larger than 20 kilowatts.

15. - 19. (No change.)

20. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to submit its annual project certifications and/or building status reports shall have 10 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, 33.6 and 33.7.

21. (No change.)

5:80-33.16 Point system for the Senior Cycle

(a) The point system for the Senior Cycle includes all point categories of the Family Cycle except the point category at N.J.A.C. 5:80-33.15(a)3 concerning large family units and the point category at N.J.A.C. 5:80-33.15(a)7 concerning smart growth areas is replaced with the following:

1. (No change.)

2. Projects that set-aside 20 percent of the units for the frail elderly shall receive one point.

5:80-33.17 Point system for the [Special Needs] Supportive Housing Cycle

(a) The point system for the [Special Needs] Supportive Housing Cycle includes all point categories of the Family Cycle except for the point categories in N.J.A.C. 5:80-33.15(a)3 concerning large family units and N.J.A.C. 5:80-33.15(a)5 concerning social services.

(b) The [Special Needs] Supportive Housing Cycle also includes the following point categories:

[1. Applications shall be awarded one-half of a point per year of guaranteed funding from any program under the HUD McKinney Act (including Shelter Plus Care) or project based rental assistance for at least 25 percent of the project up to a maximum of five points.

2. Applications shall earn one point for each year of experience its social service provider has in providing social services to the special needs population stated in the application. No points

shall be awarded if the special needs provider has less than three years of experience. The maximum points available for this category is six.

3. Applications shall earn one point for each special needs housing project that the applicant and/or social service provider has successfully developed or managed. The maximum number of points available for this category is six.

4. To qualify for the Special Needs Cycle, at least three services for the targeted special needs population shall be provided. If the owner of the project is capable of providing additional appropriate services, NJHMFA shall award two points per additional service up to a maximum of three additional services. Services shall be affordable, available, appropriate and accessible to the project's tenants. Applicants shall support their claim to provide social services by providing the following:

- i. Evidence of funding sources or documentation of how or by whom the services will be paid;

- ii. Evidence of experience of the service provider for both provision of social service and fulfillment of prior private or governmental contracts; and

- iii. Evidence of firm agreements (executed contracts) with service providers for the services.

5. Applications in which the social service provider has greater than a 50 percent interest in the general partnership or voting membership in a limited liability company shall earn an additional six points.

6. Applications demonstrating provision of appropriate services at no charge to the tenants shall earn one point for each free service up to a maximum of three points. The applicant shall provide evidence of funding for these services.]

1. Applicants shall be awarded up to eight points to the extent the social service plan required at N.J.A.C. 5:80-33.12(c)13iv incorporates the following:

i. Additional appropriate and needed services to assist tenants/residents to maintain their housing and/or residential opportunity at no cost to the target population. Appropriate and needed services must be supported by evidence-based practice, research and/or direct practice experience. One point per additional service, up to a maximum of three points, shall be awarded for this category;

ii. The services to be provided must be appropriate to the needs of the target population and the social services plan shall indicate how the needs of the tenants will be assessed, including relevant assessment tools, and how these needs will be addressed. Appropriate and needed services must be supported by evidence-based practice, research and/or direct practice experience. One point shall be awarded for this category;

iii. The social service provider(s) demonstrate(s) three or more years of experience in providing social services to the target population or a relevant special needs population. One point shall be awarded for this category;

iv. Outcome measures and methodology for evaluation of tenant outcomes and/or agreement to participate in the New Jersey Statewide Homeless Management Information System (HMIS) Collaborative. One point shall be awarded for this category;

v. Evidence of capacity and planned activities to address bi-lingual needs, cultural competency, and other special needs accommodations. One point shall be awarded for this category; and

vi. Evidence that tenants will have the opportunity to direct their individualized services plan, service goals and/or choice of services. One point shall be awarded for this category.

2. Applications that demonstrate evidence (contracts, agreements, etc.) of a minimum of three community partnerships shall be awarded one point.

3. Applicants that plan to develop permanent supportive housing (no time limit for tenancy and/or program participation) shall be awarded two points.

2. If there is still a tie after the first tie[-]breaker, the tax credit reservation shall be awarded to the project with a lower total development cost per bedroom.

5:80-33.21 Application needs analysis

(a) - (b) (No change.)

(c) NJHMFA shall perform needs analyses at three separate times: application, allocation, and at the time the project is placed in service. (See N.J.A.C. 5:80-33.23 and 33.27.) The credit amount reserved is limited to the lesser of:

1. (No change.)

2. The credit amount generated from the project's qualified basis, as (potentially) capped by the eligible basis limits. Unless a project has an alternate funding source such as a developer fee able to be [pledged] deferred, a project whose eligible basis is reduced by the eligible basis limits (thereby reducing the credit amount) may be declared infeasible due to a funding gap caused by the resulting shortfall in syndication proceeds.

5:80-33.24 Reservations, allocations and binding commitments

(a) (No change.)

(b) NJHMFA may, in its discretion, enter into a binding commitment to allocate credits from future years' tax credit authority to projects described below:

1. (No change.)

2. The next-highest ranking eligible project in the Final Cycle if that project [is a preservation project and] received only a partial allocation because NJHMFA exhausted its tax credit authority for the current year. Together, the partial carryover allocation and the binding commitment shall not exceed the maximum eligible tax credit amount.

5:80-33.25 Allocation/issuance fee schedule

Projects requesting an allocation of tax credits shall pay a fee equaling two percent of the [carryover] allocation amount over the 10-year credit period. One-half of the fee shall be paid at the time the allocation criteria described above at N.J.A.C 5:80-33.24(a) is submitted to NJHMFA. For projects requesting an issuance of tax credits from volume cap, the issuance fee shall equal two percent of the issuance amount over the 10-year credit period for NJHMFA financed projects and three percent of the issuance amount over the 10-year credit period for non-NJHMFA financed projects. One-half of the fee shall be paid at the time the credit determination described at N.J.A.C. 5:80-33.9(a)1 is made.

For both types of project, the balance (adjusted higher if volume cap tax credit issuance increases) shall be paid prior to issuance of the IRS Form 8609.

5:80-33.26 Obtaining IRS Form 8609: deadlines and extension fees

(a) The IRS Form 8609 is the form used by owners to claim the low-income housing tax credit. A form is issued for each building in the project that contains tax credit units. Prior to issuance of the IRS Form 8609, NJHMFA must receive all required information from the owner, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25. For projects receiving credits from the nonprofit set-aside, this shall include an attorney's opinion letter which states that no for-profit developer or member of the investor limited partner held a seat on the nonprofit's board of directors. NJHMFA (or its authorized designee) [shall] may also conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. Upon completion of the NJHMFA evaluation (which includes the placed in service needs analysis) and attendance by the project owner and managing agent at an NJHMFA-sponsored compliance monitoring seminar, NJHMFA shall complete Part I of the IRS Form 8609 and shall forward a copy, as filed with the IRS, to the project owner. Owners should be sure to make copies of the signed IRS Form 8609 as a copy must be filed each year with Federal tax returns.

(b) (No change.)

5:80-33.28 Project cost certification and contractor fee limits

(a) (No change.)

(b) "Contractor fee limits" with regard to contractor profit and overhead shall be set in accordance with the schedule below. Maximum fees include the base profit and overhead and any incentive cost savings fee realized. Costs included on the general conditions line must be broken out on a separate schedule. Unreasonable costs shall be disallowed. For purposes of calculating the contractor fee limits below, the construction contract amount shall not include contractor overhead and profit.

CONTRACTOR FEE SCHEDULE

<u>Construction Contract Amount</u>	<u>Fee (Overhead and Profit)</u>
\$ 0 - \$ 500,000+	11.75 percent
\$ 500,001 - \$ 1,000,000+	10.75 percent
\$ 1,000,001 - \$ 5,000,000+	9.50 percent
\$ 5,000,001 - \$10,000,000+	8.50 percent
\$10,000,001 - \$15,000,000+	7.00 percent
\$15,000,001- \$20,000,000+	6.70 percent
\$20,000,000+	6.20 percent

(c) - (d) (No change.)

5:80-33.29 Extended use agreement

Section 42(h)(6) of the Code requires the project owner to enter into an "extended low-income housing commitment agreement" that adds an additional 15-year low-income occupancy requirement to the initial 15-year compliance period. The agreement shall be recorded in order to claim the tax credits when filing Federal tax returns. Owners must complete NJHMFA's deed of easement and restrictive covenant at the latter of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property. Upon receipt and review of a complete and fully executed agreement, NJHMFA shall file the restrictive covenant pursuant to State law. [Applicants are responsible for paying the fee required to record the agreement in the County Clerk's Office.] Note: For projects which received points for agreeing to extend the project compliance period beyond the minimum 15-year period, the deed of easement and restrictive covenant shall reflect the increased compliance term stated in the application.

5:80-33.34 NJHMFA review and inspection

(a) - (b) (No change.)

(c) NJHMFA (or its authorized designee) shall also, on an annual basis, select 33 percent of all tax credit developments and shall perform physical inspections of the low-income units corresponding to (b) above to determine suitability for occupancy, taking into account State and local health, safety and

building codes. NJHMFA (or its authorized designee) shall also perform physical inspections of every building in the development. If NJHMFA (or its authorized designee) determines a violation(s) exist(s) which could render a building unsuitable for occupancy, such violation may be considered an issue of noncompliance which must be reported to the Internal Revenue Service. The owner shall be given a reasonable period of time to correct the violation(s). At the end of the correction period, NJHMFA shall notify the IRS whether the owner has or has not corrected the violation(s). Such violation(s) [shall] may also be reported for appropriate action to the Division of Codes and Standards, Bureau of Housing Inspection in the New Jersey Department of Community Affairs.

(d) (No change.)

5:80-33.36 Confidentiality of tax credit applications and information

(a) Applications and all supporting documents submitted to NJHMFA for tax credit reservations [and all supporting documents submitted by the applicant for a reservation] shall be confidential, non-public records until Final Cycle awards are announced or until cancellation of the Final Cycle is announced by NJHMFA. Thereafter, applications and all supporting documents submitted to NJHMFA for tax credit reservations shall be deemed to be public records, except the documents set forth in (c) below shall remain confidential, non-public records.

(b) Applications and all supporting documents submitted [by applicants requesting] to NJHMFA for volume cap tax credits [and all supporting documents] shall be confidential, non-public records

until NJHMFA has issued a determination letter. Thereafter, applications and all supporting documents submitted to NJHMFA for volume cap tax credits shall be deemed to be public records, except the [following supporting] documents set forth in (c) below shall remain confidential, non-public records[:].

(c) The following documents are confidential, non-public records:

1. Financing information and syndication documents submitted in compliance with N.J.A.C. 5:80-33.12(c)5. However, [the] an applicant's [Certification] certification of the [Extent] extent of Federal, State and local subsidies shall be a public record;

2. [Financing] Funding commitments and other documents submitted in compliance with N.J.A.C. 5:80-33.12(c)6 [evidencing:].

[i. Mortgage commitments from banks and other lending institutions;

ii. Owner equity pledges or loans (including the required C.P.A. certifications); and

iii. Investor commitments;]

3. [Financing information and] Documents and other information, including 15-year [operating] cash flow pro forma, submitted in compliance with N.J.A.C. 5:80-33.12(c)7; [and]

4. Financing information and Breakdown of Costs and Basis submitted in [compliance with] support of the application needs analysis described at N.J.A.C. 5:80-33.21[.]; and

5. All correspondence and other documents evidencing communications between NJHMFA and applicants for tax credit reservations and volume cap tax credits and/or such applicants' representatives that seeks or provides information regarding applications.

[(b)] (d) Information or documents submitted or prepared with respect to binding commitments, carryover applications, placed in service allocations, and IRS Form 8609 shall be confidential and shall be disclosed only as [permitted] authorized by Section 6103 of the Code.

[(c)] (e) Information submitted to NJHMFA by or on behalf of a project owner with respect to compliance monitoring[, and reports, compliance notices, and IRS Forms 8823 prepared by NJHMFA with respect to monitoring the compliance of any project shall be confidential and shall be disclosed only as [permitted] authorized by Section 6103 of the Code.

5:80-33.37 Exchange of credits

(a) A sponsor may return previously allocated credits to the Reserve in exchange for an allocation of current year credits or, at the discretion of NJHMFA, a binding commitment to allocate credits from future years' tax credit authority if the exchange is made after September 30, in an amount not to exceed the amount of the returned credits, if the sponsor establishes to the satisfaction of the Tax

Credit Committee that the sponsor, despite its timely and diligent efforts, is in jeopardy of failing to meet the placed-in-service deadline for the building with respect to which the prior credits were allocated as a result of either:

1. - 2. (No change.)

(b) - (c) (No change.)

(d) A sponsor who receives an exchange of credits as provided in this section, as well as any affiliate entity effectively under the sponsor's control and any entity that is a related party with respect to the sponsor, shall be precluded from applying for tax credits for a new project for [a period of 365 days] the next tax credit cycle following the day on which the Tax Credit Committee approves the exchange. When the sponsor, affiliate entity and any related party may again apply for tax credits for a new project, negative points related to the full return of tax credits to NJHMFA under the QAP in effect at the time the exchange is requested shall not be imposed based on an exchange pursuant to this section.

(e) - (f) (No change.)